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No. 83-1625

In the Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

v.

LYLE GERALD JOHNS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the warrantless probable cause search of bales of marijuana discovered in two pickup trucks, which would have been lawful if undertaken at the scene of the seizure or "soon" after the bales had been taken to the station house, was rendered unlawful by the passage of several days between seizure and search.

PARTIES TO THE PROCEEDING

In addition to the named respondent, Manuel Jesus Duarte, Roberto Leon Gomez, Dennis Eugene Hearron, Carlos Torres Leon, John Lizaraga Redmond, and Jose Oros Soto were defendants in the district court and are respondents here.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 707 F.2d 1093. The district court's opinion (Pet. App. 16a-28a) and its supplemental order and memorandum (Pet. App. 29a-32a) are unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 33a) was entered on June 10, 1983. A petition for rehearing was denied on January 4, 1984 (see Pet.

App. 34a). On February 27, 1984, Justice Rehnquist extended the time in which to file a petition for a writ of certiorari to and including April 3, 1984. The petition was filed on that date and was granted on June 18, 1984. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue, but on probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

On September 1, 1981, a grand jury sitting in the District of Arizona returned a two-count indictment charging respondents with conspiracy to possess marijuana with intent to distribute it, in violation of 21 U.S.C. 846, and possession of marijuana with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). Prior to trial, the district court granted respondents' motion to suppress the marijuana that was the basis of the prosecution, and the government appealed pursuant to 18 U.S.C. 3731. The court of appeals affirmed the order suppressing evidence.

1. At approximately 1:30 a.m. on August 4, 1981, United States Customs Officer Scott Eshelman received a report from an unidentified informant of suspicious activity at the Tucson Dragway, located

outside of Tucson, Arizona. The informant related that an airplane had landed at the Dragway and had been met by a car. Customs officials contacted the County Sheriff's Department and requested that the car be intercepted. The vehicle was stopped as it was leaving the scene. No criminal activity was detected, but the occupants of the vehicle were identified as respondents Johns and Hearron. The two men were allowed to proceed on their way. This information was then relayed back to Officer Eshelman's superior, Customs Officer Dale Harper. Harper had been investigating Johns for some time and had information linking him with respondents Leon and Duarte in an international drug smuggling operation. Pet. App. 2a, 17a-18a.

Based on the available information, Officer Harper decided to initiate surveillance at Leon's residence. Finding no vehicles at that location, Harper moved on to Duarte's residence, where he observed and then followed pickup trucks belonging to Leon and Duarte. After meeting a third vehicle at a nearby gasoline station, the two pickups proceeded east on Interstate Highway 10. Officer Harper contacted other Customs officers, who maintained ground and air surveillance of the two trucks as they traveled 100 miles to a private airstrip near Bowie, a small town located about 50 miles from the Mexican border. Pet. App. 2a, 18a-19a.

Shortly after the trucks arrived at the airstrip, the first of two small planes, which were later identified as belonging to respondents Johns and Hearron, landed. The agents on the ground were unable to see what transpired from their vantage point, but their counterparts in the air informed them that one of the pickup trucks had approached the first plane.

That plane ultimately departed, after which the second small plane also landed and later departed. As the Customs officers on the ground approached the trucks to investigate, they detected the odor of marijuana. An officer saw one of the respondents throwing a blanket over the contents of one of the trucks. In the trucks the officers found some 40 square packages wrapped in plastic and dark green trash bags secured with tape.[1] Pet. App. 2a, 19a-20a; 11/9/81 Tr. 134; 12/11/81 Tr. 35.

Respondents Duarte, Leon, Gomez, Redmond and Soto were arrested on the ground at the airstrip. Before leaving the scene, the officers noticed some loose vegetable matter on the ground that they believed to be marijuana. Meanwhile, the two small planes were followed back to the vicinity of Tucson by Customs officers in the surveillance airplane. Respondents Hearron and Johns, the pilots, were arrested upon landing. Pet. App. 2a, 21a-23a.

The packages and bags found in the two pickup trucks were transported to a Drug Enforcement Administration warehouse in Tucson. Subsequently—"[s]everal days" later by the district court's description (Pet. App. 22a), three days later according to

[1] One of the officers, described by the district court as an "experienced law enforcement officer[] with many years of on-the-job experience, including the investigation of marijuana cases" (Pet. App. 22a n.2), testified, based upon his experience, that marijuana is commonly packaged in this manner (*id.* 20a).

At a supplementary hearing on the motion to suppress, one of the Customs officers testified, for the first time, that several of the bags in which the marijuana was found were torn in spots and that the contents of the bags, which appeared to be marijuana, were visible. The district court declined to credit this additional testimony (Pet. App. 21a-22a n.2).

the court of appeals (*id.* at 2a, 9a)—DEA agents took core samples from some of the bales.[2] The samples were sent for laboratory analysis and proved to be marijuana. No search warrant was secured at any time during this sequence of events. Pet. App. 2a, 22a.

2. All respondents moved to suppress the contraband, claiming that the warrantless search of the bales of marijuana violated their Fourth Amendment rights. Following an evidentiary hearing, the district court granted the suppression motion (Pet. App. 16a-28a). Relying on *Robbins* v. *California*, 453

[2] We do not believe that the record provides any support for these descriptions of the timing of the taking of core samples. The timing of the completion of the search of the bales simply was not the focus of any particular controversy in the district court (or in the court of appeals, at least until after the court of appeals had rendered its decision), see pages 6-7, *infra*, and the district court undoubtedly did not intend to make a precise finding of fact on this point. The only evidence of which we are aware that bears on the timing issue indicates that the core samples were taken the day after the seizure (12/11/81 Tr. 61). In the court of appeals the government's brief stated (at 6) that the interval was one day. Respondents Duarte, Leon, Soto, Gomez and Redmond asserted (Br. 3), however, that there had been a lapse of three days. But the stipulation reflected at the transcript pages cited in support of their assertion (11/9/81 Tr. 5) simply does not address the timing of the station house search. And when we observed in our petition for rehearing (at 5) that the court of appeals' statement based upon respondents' assertion had no foundation in the record, respondents were unable to adduce any record support therefor. See Opp. to Pet. for Rh'g 1-5. (The court of appeals nevertheless denied rehearing.) We do not ask this Court to review the court of appeals' factual assumption regarding the timing of the core sampling, but instead assume for purposes of this brief that the interval between seizure and search was three days.

U.S. 420 (1981), the court held that the insubstantial nature of the containers searched did not justify dispensing with a warrant (Pet. App. 23a-27a). The district court also refused to apply the automobile exception to the warrant requirement on the ground that "[t]he defendants were arrested and the contraband secured at the DEA warehouse" before the search of the bags was carried out (*id.* at 24a). Finally, the district court declined to recognize a "plain odor" exception to the warrant requirement (*ibid.*) and found the evidence insufficient to establish that the plastic-wrapped bales "could have only contained marijuana" (*id.* at 27a-28a).[3]

3. While this case was pending on the government's appeal, this Court decided *United States* v. *Ross*, 456 U.S. 798 (1982), and, in the process, overruled *Robbins* v. *California*, *supra*, upon which the district court had relied. *Ross* held that the automobile search exception to the warrant requirement permits the warrantless examination of the contents of a container found in a vehicle search conducted upon probable cause, provided that the container is one that might reasonably contain the object of the

[3] The district court initially found that respondents Johns and Hearron, the pilots who had delivered the marijuana and departed from the Bowie airstrip prior to its seizure, had not established any "interest in the suppressed evidence" (Pet. App. 28a) and accordingly lacked standing to seek suppression. But, responding to the district court's invitation to supplement their showing in this regard, Johns and Hearron argued that they had made a bailment of the marijuana and retained rights therein sufficient to permit them to challenge the search of the bags. Although these assertions, if credited, would seem to suggest that the other five respondents lacked "standing," the district court simply revised its suppression order to benefit all respondents (Pet. App. 29a-32a).

search. The parties submitted supplemental memoranda to the court of appeals addressing the significance of *Ross* for this case. Respondents argued that *Ross* should not be applied here because the search at issue antedated the decision in that case. In addition, respondents claimed that probable cause in this case had focused exclusively upon the plastic wrapped bales and did not extend to the pickup trucks, so that this case would be controlled by *United States* v. *Chadwick*, 433 U.S. 1 (1977), and *Arkansas* v. *Sanders*, 442 U.S. 753 (1979), rather than *Ross*.

While it rejected respondents' arguments respecting the application of *Ross*, the court of appeals nevertheless affirmed the suppression order (Pet. App. 1a-15a).[4] The court concluded initially that because *Ross* establishes that warrantless container searches subject to the automobile search doctrine are *not* unlawful, and no legitimate reliance interest would be undercut by its application, *Ross* is fully applicable to searches antedating its decision (Pet. App. 6a-8a). Second, the court of appeals determined that the focus of the officers' suspicion was not exclusively upon the plastic-wrapped bales. Emphasizing that the law enforcement officers were unable to see the transfer of the bales from the airplane to the pickup trucks, and that the officers did not know the nature and packaging of the contrabrand transferred before arriving on the scene, the court explained (*id.* at 8a-9a) that "it was not obvious that all the contraband would be in the bales. The [respondents] could have easily secreted other drugs elsewhere in the vehicles."

[4] The court of appeals upheld the district court's ruling according "standing" to the pilots, respondents Johns and Hearron (Pet. App. 13a-15a).

The court of appeals acknowledged, moreover, that "[t]he officers had probable cause to search both [pickup] trucks" and that, "[u]nder *Ross*, they also could have opened the packages [without a warrant] as part of that search" even after the packages had been secured at the DEA warehouse (Pet. App. 9a, 13a). Nevertheless, the court held that the taking of core samples from the bags without a warrant was unlawful because of the time that had passed between the seizure of the bags and the ensuing search (see pages 4-5 & note 2, *supra*). The court relied primarily on cases holding that the search-incident-to-arrest doctrine does not permit a warrantless search of property seized from an arrested suspect after the arrest encounter is completed (Pet. App. 9a-11a). The court also relied (*id.* at 11a, 13a) upon the characterization in *Ross*, 456 U.S. at 807 n.9, of *Chambers* v. *Maroney*, 399 U.S. 42, 52 (1970), as extending the automobile search exception to station house searches conducted "soon" after a seizure. The court reasoned that the practical difficulties of guarding an automobile stopped on the highway and the possible dangers of an on-the-spot search—which it believed to be the basis for this extension—"do not apply to a container that may be removed from the vehicle and secured by the police" (Pet. App. 12a).

The court of appeals observed that *Ross* had not overruled *Chadwick* or *Sanders*, and that those cases require that a warrant be obtained to conduct a probable cause search of a container not subject to the automobile search doctrine. The court accordingly concluded that *Ross* did not justify a warrantless search of "containers no longer in an automobile and secured by the police for three days" prior to the search (Pet. App. 12a). The bases for the auto-

mobile warrant exception—described as the inherent mobility of automobiles and the impracticability of securing a warrant in cases involving the transportation of contraband—do not apply in these circumstances, the court of appeals reasoned (*id.* at 13a, 15a). Nor did the court of appeals believe that *Ross* "so destroys the expectation of privacy in a container subject to an automobile search that the container is thereafter subject to search without a warrant" (Pet. App. 12a). The court concluded that because the officers "could have easily obtained a warrant" (*id.* at 13a) during the three days between seizure and search, their failure to do so rendered the search unlawful.

The court of appeals also rejected the government's alternative contention that the plain odor of marijuana emanating from the plastic-wrapped bales made it unnecessary to obtain a warrant prior to the search of the packages (Pet. App. 3a-6a). The court of appeals acknowledged the contrary decision of the Fourth Circuit in *United States* v. *Haley*, 669 F.2d 201, 203-204 & n.3, cert. denied, 457 U.S. 1117 (1982), but held that the odor provided no more than probable cause and that the parcels "did not announce their contents with sufficient clarity to eliminate the need for a warrant" under the exception to the warrant requirement recognized in *Arkansas* v. *Sanders*, 442 U.S. at 764-765 n.13 (Pet. App. 4a-5a & n.2).

INTRODUCTION AND SUMMARY OF ARGUMENT

This is a case in which law enforcement officers lawfully seized two pickup trucks at a remote airstrip near the Mexican border after observing a clandestine nighttime rendezvous between the trucks and two small aircraft. The initial, concededly law-

ful, search of the trucks disclosed that they contained some 40 bales—the apparent source of the distinct odor of marijuana detected by the officers as they approached the trucks. The court of appeals acknowledged that the officers could lawfully have opened the bales on the spot without a warrant, even though all suspects on the scene had been arrested, the trucks were in the custody of the agents, and there was no longer any substantial risk that the bales could be removed or destroyed in the time that would be required to procure a search warrant. Similarly, the court of appeals indicated that it would have upheld a search of the bales if conducted immediately upon their arrival at the law enforcement facility at which they were secured. However, no doubt in large part because the officers already knew (as well as anything can be "known") what the bales contained, they did not go through the empty formality of opening the bales at that time. Several days later, however, they extracted core samples of the substance contained in the bales and sent them to a laboratory for chemical analysis. Because of the delay in undertaking this action to complete the search, the court of appeals held that a warrant was required and suppressed the marijuana as evidence.

A. This case is controlled by *United States* v. *Ross*, 456 U.S. 798 (1982), and by this Court's decisions recognizing an automobile search exception to the warrant requirement. In *Ross* the Court held that the automobile search doctrine authorizes warrantless examination of any container found inside a vehicle in which the object of a probable cause search of the vehicle may be found. And in an unbroken line of decisions beginning with *Chambers* v. *Maroney*, 399 U.S. 42 (1970), the Court has made clear that so long as searching officers possess prob-

able cause supporting a warrantless auto search at the time a vehicle is seized, the warrantless search may be completed later, notwithstanding the passage of time, the intervention of other law enforcement procedures between the initial seizure and completion of the search, or the fact that the search is conducted in secure law enforcement offices rather than at the scene of the seizure. The justification for these decisions, briefly put, is simply that the "probable cause factor"—the essential predicate for a warrantless automobile search—"still obtain[s]" regardless of those intervening developments. *Chambers* v. *Maroney*, 399 U.S. at 52.

The considerations that led the Court to uphold warrantless automobile searches even though conducted at the station house rather than at the time and place of the seizure are fully applicable notwithstanding any delay in completion of an automobile search. That is, given the scope of the initial intrusion effected by seizure of a motor vehicle, a requirement that station house automobile searches be undertaken immediately would not provide any significant protection for privacy interests. At the same time, such a requirement would penalize law enforcement authorities for attending to competing responsibilities that may make immediate completion of a search infeasible and would thrust upon the courts the burdensome task of assessing, case by case, whether there was sufficient justification for interrupting or postponing a search. Such an approach would needlessly impair the clarity of the bright-line rule established in *Ross* and the automobile search cases.

B. *Ross* holds that the scope of the warrantless search authorized under the automobile exception is

commensurate with that which a magistrate could have authorized based upon the available probable cause. 456 U.S. at 823, 825. It is plain that several days' interruption in a warrant search of an automobile would not require officers to obtain a new warrant in order to complete the examination of suspicious containers found within the automobile. The "hypothetical warrant" reasoning of *Ross* thus confirms that a three-day delay in conducting or completing a probable cause search of a vehicle or containers found therein does not create the need to obtain a warrant.

C. Contrary to the view of other courts of appeals, which have understood *Ross* and *Chambers* to be controlling in circumstances such as those presented here, the court below believed that automobile search principles are inapplicable to delayed searches of containers that have been removed from the vehicle and secured in government custody. The distinctions perceived by the court of appeals are, however, insubstantial in light of the pertinent decisions of this Court.

The physical separation of the bales from the trucks is a wholly illusory ground of distinction. It is commonplace—especially in searches for illegal drugs—that containers believed to harbor contraband will be removed from a vehicle in the course of completing a search. But under this Court's decisions the physical location of a container at the time of search does not govern the applicability of the automobile search doctrine. Rather, the question is whether the probable cause that supports a search is directed at the outset to the vehicle or to the container alone. Nor is it relevant that the bales of marijuana were impounded here in a secure government facility. The Court directly rejected any such distinction in *Michigan* v. *Thomas*, 458 U.S. 259 (1982), and again, only last Term, in *Florida* v. *Meyers*, No. 83-1279 (Apr. 23, 1984).

The passage of time between the inception of the seizure and the completion of the search does not have any more significance here, where the inspection of a container is undertaken on a auto search rationale, than it does in auto search cases generally. Neither respondents nor the court of appeals has explained how any legitimate expectation of privacy entitled to the protection of a warrant requirement can arise simply by virtue of a few days delay in completing the search of a container. Quite the contrary seems true: the delay in execution of the search of seized items protects privacy interests by affording a pre-search opportunity to secure return of the property where probable cause is lacking. Fed. R. Crim. P. 41(e).

Moreover, any suggestion that such a revival of privacy expectations should be recognized would be inconsistent with the facts of this case. The delay in completing the search here was almost surely due in large measure to the officers' justifiable certainty that they already knew precisely what they had seized. Thus, although it presumably would have been possible, as the court of appeals asserted, to procure a warrant here, there is no showing that it was unreasonable to proceed without one. The salient feature of *Chambers* v. *Maroney* and its progeny—applicable to containers found in a vehicle search by virtue of *Ross*—is that there is no need to demonstrate the infeasibility of securing a warrant in order to justify a warrantless probable cause search.

The court of appeals also erred in concluding that the rationale for the automobile search doctrine has no application here because of the facts of this case. Indeed, the court of appeals seems to have misunderstood the fundamental bases for the auto search doctrine, and was accordingly unable to recognize their applicability. In fact, both the "mobility" justification for the automobile exception, which turns on mobility of the vehicle at the time of its seizure, rather than at the time of the search, and the diminished expectation of privacy rationale, which the court of appeals wholly overlooked, support the warrantless search of respondents' marijuana bales conducted in this case.

ARGUMENT

THE SEARCH OF RESPONDENT'S MARIJUANA BALES THREE DAYS AFTER THEIR SEIZURE DURING A CONCEDEDLY LAWFUL VEHICLE SEARCH DID NOT VIOLATE THE FOURTH AMENDMENT

The court of appeals concluded that the bales of marijuana discovered in the course of the lawful warrantless automobile search at the airstrip could not themselves be searched without a warrant because they had been removed prior to the search from the pickup trucks in which they were found and because of the three-day lapse between the seizure and completion of the search. The conclusion is incompatible with the pertinent decisions of this Court and is not justified by any relevant policy or practical consideration.

A. This Court's Decisions Upholding Warrantless Automobile Searches Place No Limit On The Time That May Intervene Between Seizure Of The Vehicle And Completion Of The Search

1. In *United States* v. *Ross*, 456 U.S. 798 (1982), this Court held that the automobile search exception to the warrant requirement (first recognized in *Carroll* v. *United States*, 267 U.S. 132 (1925)) extends to all "containers and packages found inside the vehicle" (456 U.S. at 820; see also *id.* at 822) "in which there is probable cause to believe that [the object of the search] may be found" (*id.* at 824). The Court observed that a warrant to search a vehicle would suffice to authorize the search of containers found therein that could contain the object of the search (*id.* at 821), and it concluded that "the scope of the warrantless search authorized by [the automobile search] exception is no broader *and no narrower* than a magistrate could legitimately authorize by warrant" (*id.* at 825; emphasis added). "When a legitimate search is under way * * * nice distinctions between * * * glove compartments, upholstered seats, trunks, and wrapped packages * * * must give way," the Court stated (*id.* at 821), explaining (*id.* at 821 n.28):

> The practical considerations that justify a warrantless search of an automobile continue to apply until the entire search of the automobile and its contents has been completed.

Ross does not carve out any novel or unfamiliar exception to the warrant requirement. Rather, it simply applies the well-established automobile search doctrine recognized in *Carroll* and its progeny to containers found in the course of an automobile search.

See 456 U.S. at 825. Such container searches were held to be analytically inseparable from the search of the automobiles in which the containers are found. Thus *Ross* imports no special limitations upon the automobile search doctrine. The question in this case accordingly must be resolved by reference to this Court's decisions that address the permissible scope of warrantless automobile searches. Those cases indicate that the automobile search doctrine is not rendered inapplicable by the passage of time between seizure of an automobile and completion of a search.

2. In *Chambers* v. *Maroney*, 399 U.S. 42 (1970), the Court rejected a challenge to a warrantless station house search of an automobile, even though the search had been conducted at a time when no exigency rendered procurement of a warrant impracticable. The Court first observed that under *Carroll*, because probable cause was present, the vehicle could have been searched on the spot without a warrant at the time it was stopped (399 U.S. at 47-52). But the Court declined to limit the opportunity for a lawful warrantless search of the vehicle to the time and place of the seizure, observing that "[t]he probable-cause factor still obtained at the station house" (*id.* at 52). The Court did not comment upon the amount of time that had elapsed between the seizure and the search; plainly it was not a material consideration in the Court's analysis.

In *Chambers*, the district court and the court of appeals had upheld the delayed automobile search on a search incident to arrest theory, reasoning that, because it was dark at the time of the arrest (and the seizure of the automobile), it was reasonable to defer the search until it could be conducted at the station house. See *United States ex rel. Chambers* v.

Maroney, 408 F.2d 1186, 1192 (3d Cir. 1969), aff'g 281 F. Supp. 96, 100 (W.D. Pa. 1968). But this Court rejected the search incident to arrest rationale of the lower courts, stating "the reasons that have been thought sufficient to justify warrantless searches carried out in connection with an arrest no longer obtain when the accused is safely in custody at the station house" (399 U.S. at 47). The Court instead sustained the challenged search under the *Carroll* doctrine. *Chambers* thus indicates that warrantless automobile searches based on probable cause are free of the contemporaneity requirements ordinarily applicable to searches incident to arrest. See also *Cooper* v. *California*, 386 U.S. 58 (1967) (upholding warrantless auto search undertaken seven days after seizure).[5]

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[5] The auto in *Cooper* was seized under a forfeiture statute that was applicable to vehicles used to facilitate the illegal drug trade, and was held for use as evidence, and ultimately for sale by the state. The doctrinal basis of *Cooper* is not entirely clear. Cf. *Ross*, 456 U.S. at 809 n.11. It appears to rest in part upon a community-caretaking or officer-protection rationale, see 386 U.S. at 61-62, and has been understood to presage the inventory search doctrine of *South Dakota* v. *Opperman*, 428 U.S. 364, 372-375 & n.8 (1976). *Cooper* has also generally been viewed as reflecting the limited expectation of privacy that attaches to automobiles (as compared with homes and offices) under the Fourth Amendment, see *United States* v. *Chadwick*, 433 U.S. 1, 12 (1977); *Cady* v. *Dombrowski*, 413 U.S. 433, 439-448 (1973), and thus bears a close family relationship to the automobile search doctrine. No principled basis for distinguishing *Cooper* as respects the timing of a warrantless search has been suggested here. Indeed, to the extent *Cooper* rests on the proposition that no warrant is required to search a vehicle that there is probable cause to believe is subject to forfeiture, it is noteworthy that here not only the trucks but the bales containing the marijuana were subject to forfeiture. See 21 U.S.C. 881(a)(3).

Nor was there any suggestion in *Cardwell* v. *Lewis*, 417 U.S. 583 (1974), that delay vitiated the lawfulness of the warrantless search. Even though the examination of a car did not take place until the day after the seizure (see *id.* at 587-588), *Chambers* v. *Maroney* was deemed controlling. *Id.* at 593-596 (opinion of Blackmun, J.). Significantly, the Court's only comment on the delay was that it precluded justification of the search as an incident of the arrest. *Id.* at 591 n.7.[6]

The Court's opinion upholding a station house automobile search in *Texas* v. *White*, 423 U.S. 67 (1975), confirms that prompt completion of such a search is not a requirement of the *Carroll/Chambers* doctrine. The Court simply stated that, as in *Chambers*, " '[t]he probable cause factor' that developed at the scene 'still obtained at the station house.' " 423 U.S. at 68, quoting *Chambers*, 399 U.S. at 52 (brackets in original). In the Court's view, a sufficient basis for the search was that "there was probable cause to search respondent's car" (423 U.S. at 68).[7]

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[6] The dissenters in *Cardwell* found the automobile search exception inapplicable not because of delay between seizure and search, but because of the absence of generic exigency factors at the time of the original seizure—the car was parked, its owner was under arrest, and the police possessed the car keys. See 417 U.S. at 598. Whatever the correctness of the view that some kind of exigency must exist at the time of seizure (but see *United States* v. *Chadwick*, 433 U.S. 1, 12 (1977)), there is no dispute that any such requirement was satisfied in the instant case.

[7] Justice Marshall, joined by Justice Brennan in dissent, stated that it was irrelevant that the search was completed more promptly than a warrant could have been obtained, observing that "*Chambers* took such time elements out of the equation" (423 U.S. at 72 n.*).

Since *Texas* v. *White*, this Court has repeatedly confirmed that so long as the searching officers possess probable cause for a warrantless auto search at the time a motor vehicle is seized, a vehicle search remains lawful even if the place of the search changes and time or other law enforcement procedures intervene between the initial seizure and completion of the search. In *Michigan* v. *Thomas*, 458 U.S. 259 (1982), a vehicle was stopped for a traffic violation. Because the driver was underage and the passenger-owner had been arrested, a tow truck was called to take the vehicle to an impoundment lot. An on-the-scene inventory search disclosed the presence of two bags of marijuana in the auto glove compartment. A second, more thorough, search revealed a concealed loaded revolver. On the defendant's motion to suppress the revolver, the Michigan Court of Appeals held the second search unlawful because conducted without a warrant. 458 U.S. at 259-260. This Court reversed. Citing *Chambers*, the Court explained: "[W]hen police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a warrantless search of the vehicle, even if it has been impounded and is in police custody" (458 U.S. at 261). Emphasizing that no exigency need be demonstrated as of the time of the completion of the search (*id.* at 261-262 & n.2), the Court reiterated (*id.* at 261; footnote omitted):

> [T]he justification to conduct * * * a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have

been tampered with, during the period required for the police to obtain a warrant.

Florida v. *Meyers*, No. 83-1279 (Apr. 23, 1984), continues this consistent line of authority. There the defendant's car had initially been searched at the time and place of his arrest. Certain items were seized at that point. The defendant's car was then towed and "impounded in a locked, secure area" (slip op. 1). Approximately eight hours later, a second warrantless search of the defendant's auto was conducted in which additional evidence was discovered. The Florida District Court of Appeal held that the additional evidence should have been suppressed, distinguishing *Chambers* on the ground that "in this case the element of mobility was removed because [the defendant's] vehicle had been impounded" prior to the second search (*Florida* v. *Meyers*, slip op. 1). This Court reversed on the authority of *Chambers* and *Thomas*, emphasizing that the impoundment of the vehicle in no respect rendered the warrantless automobile search doctrine unavailable.[8]

Thus, this Court's automobile search decisions do not require that a warrantless station house search based on probable cause be conducted within any particular interval following a seizure based on the same probable cause. Indeed, respondents have acknowledged as much in this Court, conceding that the automobile search doctrine permits such searches to be

[8] Justice Stevens, joined by Justices Brennan and Marshall dissented in *Meyers*, but solely on the ground that review by this Court was unwarranted. Justice Stevens stated that "[i]n this case the Florida District Court of Appeal for the Fourth District appears to have made an error" (slip op. 1), and remarked: "Clearly, the law in this area is well settled" (slip op. 2).

conducted "long after [an automobile has] been immobilized by impoundment at a law enforcement warehouse" (Br. in Opp. 31). Because *Ross* simply holds that, under the auto search "exception recognized in *Carroll*," a showing of probable cause "justifies the search of every part of the vehicle and its contents that may conceal the object of the search" (456 U.S. at 825), no basis exists for specially restricting the timing of warrantless automobile container searches.

3a. The court of appeals' disagreement with this principle appears to rest, at least in part, upon a single word taken out of context from a footnote in *Ross*. The sentence in question characterizes *Chambers* v. *Maroney* and *Texas* v. *White* as establishing "that if an immediate search on the street is permissible without a warrant, a search *soon* thereafter at the police station is permissible if the vehicle is impounded." 456 U.S. at 807 n.9 (emphasis added). The court of appeals evidently took the adverb "soon" to impose an outside temporal limit upon the completion of a warrantless automobile search somewhere short of three days. See Pet. App. 11a, 13a. But no question was presented in *Ross* that created any occasion for considering any such limit.[9] And the rather vague descriptive language ("soon thereafter") cited by the court of appeals simply alluded

[9] The facts of *Ross* include both a preliminary on-the-street search of an automobile trunk in which a container (a paper bag) was opened, and a subsequent, more thorough, station house search of the car in which an additional container (a zippered red leather pouch) was opened (456 U.S. at 801). Ross argued (Resp. Br. 6-7, 13-21) that *Chambers* v. *Maroney* should be overruled. But he did not argue that the timing of the station house search was impermissible.

to and reaffirmed the teaching of *Chambers* and *White*.[10] As noted above, those cases and their progeny plainly do not establish any rule requiring prompt completion of a station house automobile search.[11] Moreover, careful examination of footnote 9 in the Court's opinion in *Ross* confirms that the thrust of the Court's discussion is to reject—rather than to impose—arbitrary limitations upon the timing or location of the warrantless probable cause searches sanctioned by *Carroll*.

Thus, in tracing the contours and rationale of the *Carroll* doctrine, the Court observed, first, that subsequent cases, especially *Chambers*, make clear that the lawfulness of a warrantless search does not depend upon a demonstration that any exigency required an immediate search, or made it infeasible to limit police to a warrantless seizure to be followed by a warrant-authorized search. The Court explained that, "'[g]iven probable cause to search, either course is reasonable under the Fourth Amendment'" (456 U.S. at 807 n.9, quoting *Chambers*, 399 U.S. at 52). Second, the Court rehearsed the teaching of *Chambers* and *Texas* v. *White*, recognizing the lawfulness of post-seizure station house auto searches, as well as those conducted at the scene of a vehicle

[10] Of course, even if the word "soon" was intended to recognize some temporal limit upon completion of a warrantless automobile search, it hardly follows that that limit was exceeded by the time elapsed here.

[11] To the extent the court of appeals' decision rests upon a restrictive reading of the auto search doctrine, independent of any special considerations that govern its application to searches of containers found in the course of a lawful warrantless vehicle search, respondents have recognized that it is untenable (see Br. in Opp. 31).

seizure. The Court explained that "[t]hese decisions are based on the practicalities of the situations presented and a realistic appraisal of the relatively minor protection that a contrary rule would provide for privacy interests" (456 U.S. at 807 n.9). The Court thus recognized that given the magnitude of the "initial intrusion caused by a seizure of an automobile—which often could leave occupants stranded on the highway"—and the ability of police, if left no alternative, to carry out auto searches at the scene of the seizure, there is little to be gained in terms of the values protected by the Fourth Amendment by limiting warrantless search authority to the time and place of the seizure (*ibid.*). At the same time, the Court intimated, requiring on-the-scene searches may often be burdensome, impractical, or unsafe for police and accordingly is unjustified.

b. The policies that underlie the application of the automobile search doctrine to post-seizure station house searches confirm that the time limitation created by the court of appeals is not justified. Whether or not a station house search of a vehicle (and its contents) is undertaken at the earliest practical opportunity, its limited incremental impact upon the privacy interests of an individual who has been subject to a seizure of his motor vehicle is the same. Thus, no Fourth Amendment privacy interest of the individual is fostered by insisting that the search be carried out with particular expedition.[12]

[12] We note that while the Fourth Amendment requires that warrants "particularly describ[e] the place to be searched, and the persons or things to be seized," there is no comparable directive that the timing of a search be specified, much less that it be stated with particularity. The language of the Fourth Amendment reflects that the underlying policy of pro-

Indeed, the initial seizure, coupled with the clearly established authority of the officers to carry out an immediate warrantless search, leaves no basis for any legitimate expectation of privacy to be vindicated by imposing a warrant requirement as to less immediate searches. If anything, delay in completion of a warrantless search is beneficial to persons whose property has been seized, because it affords such persons a greater opportunity, if they have cause to challenge the lawfulness of the seizure, to move to compel the return of their property under Fed. R. Crim. P. 41(e), before any search occurs. See also pages 36-38, *infra*.[13]

A rule imposing time limitations upon completion of station house searches will, on the other hand, create needless burdens upon law enforcement analogous to those that would have resulted from a rule limiting warrantless auto searches to the scene of the seizure. Of course, police could ordinarily adopt

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tecting against unreasonable infringement of legitimate privacy expectations is not ordinarily advanced by controlling the timing, as opposed to the justification for or scope of, searches.

[13] Perhaps circumstances could be imagined in which a delay in conducting a search of a seized vehicle or other seized property would itself unreasonably interfere with the owner's possessory (as distinct from privacy) interest in the property. That cannot be so here because the agents possessed probable cause to believe that the bales were contraband in which no property interest could be recognized, see 21 U.S.C. 881, and because respondents never asserted that the agents had seized property in which they had a legitimate possessory interest. In any event, any such possessory interest could not logically support imposition of a warrant requirement, because interference with such an interest flows from the seizure and not the search, and issuance of a search warrant would not alleviate any injury caused by the delay.

the practice of completing searches at the place of the seizure or as soon as the seized property has been secured at the station house. But law enforcement resources are not unlimited. Even when there is no compelling reason, in terms of the progress of the particular investigation, for interrupting the search process, other law enforcement duties will frequently intervene. Some of these, such as responding to emergencies that threaten public safety and to investigative leads that require rapid follow-up, attending to the prompt initial appearance of arrested suspects before a judicial officer, or preparing contemporaneous reports documenting police officers' investigations, are objectively more pressing than completing a search of an automobile or its contents that has been seized upon probable cause. It would be ironic indeed if, by attending to competing law enforcement obligations that divert them from immediate completion of a station house search, law enforcement officers thereby incur an obligation to further delay any search, and further strain law enforcement resources, by having to seek a warrant before an intrinsically reasonable search can resume. Because a rigid requirement of prompt completion of a warrantless automobile search would afford no incremental protection to interests secured by the Fourth Amendment, " 'either course' "—completing a station house search at the earliest practicable moment or undertaking the search at the time that is most suitable from a law enforcement perspective in light of competing obligations and priorities—"is reasonable under the Fourth Amendment" (*Ross*, 456 U.S. at 807 n.9, quoting *Chambers*, 399 U.S. at 52).

Moreover, there will be cases in which it is impossible to complete a search within the ambiguously

defined interval allowed by the court of appeals. See, *e.g.*, *Cardwell* v. *Lewis*, 417 U.S. at 595 n.11 (opinion of Blackmun, J.). It is not at all clear from the court of appeals' opinion whether a warrant would be required even if the court is satisfied that the delay meets some standard of reasonable justification, or, perhaps, absolute necessity. But even assuming that the court of appeals would not press the present ruling that far, the result would be to thrust upon the courts the burden of assessing, on a case by case basis, whether the delay was "too long" in light of the factors that explain it, even though the outcome of this inquiry in no way promotes substantial individual privacy interests.

Indeed, this inquiry is especially likely to be sterile, for it is difficult to imagine what advantage law enforcement officers could possibly gain by unnecessarily delaying completion of an automobile search. On the contrary, there is every incentive for officers to complete a search as soon as practicable where the results of the search are material to advancing the investigation. Thus it is highly likely—were the inquiry pursued—that any delay would be found to be attributable to reasonable law enforcement resource allocation decisions, rather than any form of abuse.[14]

c. In *Ross*, the Court deliberately and explicitly rejected a technical approach to the application of the Fourth Amendment in automobile search cases that might obscure the clarity of the doctrine by burdening it with fact-bound assessments and distinctions to be developed through case-by-case adjudica-

[14] Of course, the cause of any significant delay that may have occurred in this case has never been ascertained. Prior to the court of appeals' decision there was no reason to believe that this would be a pertinent fact.

tion. The Court acknowledged that the broad bright-line "rules" it had established may at times "appear unsatisfactory" as "applied in particular cases" (456 U.S. 807 n.9). But the Court directed that these rules be applied without case-by-case adjustment because "[t]hey reflect * * * a reasoned application of the more general rule that if an individual gives the police probable cause to believe a vehicle is transporting contraband, he loses the right to proceed on his way without official interference" (*ibid.*). The Court also took particular note of the special "importance of striving for clarification" regarding the application of the automobile search exception, observing that "countless vehicles are stopped on highways and public streets every day, and * * * that it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle." *Id.* at 803-804; see also *id.* at 825 (Blackmun, J., concurring); *id.* at 826 (Powell, J., concurring). The regime of case-by-case assessment of the reasonableness of the timing of station house auto searches portended by the court of appeals' decision would substantially impair the clear and readily administrable rule established in *Ross*: that the "scope of a warrantless search of an automobile" is "defined by the object of the search and the places in which there is probable cause to believe that it may be found" (*id.* at 824), and that the "justif[ications for] a warrantless search * * * continue to apply until the entire search of the automobile and its contents has been completed" (*id.* at 821 n.28). See also *Illinois* v. *Lafayette*, No. 81-1859 (June 30, 1983), slip op. 8; *Illinois* v. *Andreas*, No. 81-1843 (July 5, 1983), slip op. 7; *New York* v. *Belton*, 453 U.S. 454, 458-460 (1981).

B. The Scope And Timing Of A Warrantless Automobile Search Should Be No More Limited Than A Comparable Warrant Search

As we have observed, the Court's decision in *Ross* establishes that when a container discovered in a probable cause search of an automobile is reasonably capable of holding the object of the search, the container itself may be searched without securing separate legal authorization. 456 U.S. at 817-824. The Court noted that the justification for the warrantless search logically extends equally to containers found within the vehicle and to compartments that are constructed as an integral part of the vehicle (456 U.S. at 818):

> It would be illogical to assume that the outcome of *Chambers*—or the outcome of *Carroll* itself—would have been different if the police had found the secreted contraband enclosed within a secondary container and had opened that container without a warrant. If it was reasonable for prohibition agents to rip open the [automobile] upholstery in *Carroll*, it certainly would have been reasonable for them to look into a burlap sack stashed inside; if it was reasonable to open the concealed compartment in *Chambers*, it would have been equally reasonable to open a paper bag crumpled within it. A contrary rule could produce absurd results inconsistent with the decision in *Carroll* itself.

Because the *Carroll* doctrine "neither broadened nor limited the scope of a lawful search based upon probable cause" (*Ross*, 456 U.S. at 820), the Court reasoned that the permissible scope of a warrantless automobile search is the same as that which a magistrate could have authorized based upon the probable

cause on which the officers acted. 456 U.S. at 823, 825. Such a warrant search would, of course, extend to any container found with the vehicle that might contain the object of the search, just as a warrant to search fixed premises would extend to any enclosure found within it in which the item sought could be located. *Id.* at 821. Accordingly, as in the case of a warrant-authorized search of an auto, the "considerations that justify a warrantless search of an automobile continue to apply until the entire search of the automobile *and its contents* has been completed." *Id.* at 821 n.28 (emphasis added).

Ross thus teaches that the "scope of the warrantless search authorized by [the *Carroll*] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant" (456 U.S. at 825). But for the magistrate's prior approval, which is "waived," "the search otherwise is as the magistrate could authorize" (*id.* at 823). This principle—that cases such as this are to be analyzed as though a warrant had issued at the time of seizure—requires reversal of the judgment of the court of appeals. As *Ross* makes clear (*id.* at 820-821 & n.27), if the search of the respondents' pickup trucks had been authorized by warrant, the officers undertaking the search of the bales of marijuana would not have been required to procure a second warrant to complete that procedure.[15] Nor would separate authorization have been required simply because three days had elapsed between the issuance of the hypothetical

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[15] See, *e.g.*, *United States* v. *Johnson*, 709 F.2d 515, 516 (8th Cir. 1983), relying on *Ross* in rejecting a claim that a second warrant was necessary to authorize a station house search of a safe discovered in a warrant-search of the defendant's house.

warrant and its execution. Rather, absent a showing that the completion of the search violated the reasonableness standard of the Fourth Amendment in some concrete respect—or violated the time limit fixed by the original warrant, which is ordinarily *ten* days (Fed. R. Crim. P. 41(c)(1))—completion of the search would have been authorized by the original warrant.

Of course, there may be circumstances in which, because of staleness or the acquisition of new information undermining probable cause, a delayed search becomes unreasonable. There is no such problem here, because the probable cause predicate for the original search and seizure was plainly unaffected by the passage of time. The bales believed to contain marijuana were continuously in the custody of law enforcement agents from the moment they were discovered in the pickup trucks, their contents unaltered. In sum, it seems clear that, in cases like this one, the hypothetical warrant that *Ross* teaches is conferred on agents at the time of a probable cause seizure of the vehicle may reasonably be executed several days later at a secure government facility.

C. None Of The Factors Relied On By The Court Of Appeals Renders The Automobile Search Doctrine Inapplicable In The Circumstances Of This Case

1. The court of appeals stated that the "factual basis of [its] holding" distinguishing this case from *Chambers* and *Ross* was that, instead of inspecting the contents of the marijuana bales at the point of seizure, or searching "the trucks and packages soon thereafter at their headquarters," the agents "chose to seize and impound the packages" and "stored the packages for three days" before opening them without a warrant (Pet. App. 13a). None of the factors considered by the court—the separation of the bales from the trucks, the impoundment of the bales, or the lapse of time between seizure and completion of the search—removes this case from the reach of the automobile search doctrine or the policies that define its scope.[16]

a. The court of appeals seemed to assume (see Pet. App. 12a-13a) that because of the physical sepa-

[16] As we observed in the petition (at 21-22), the court of appeals' decision conflicts with the decisions of other courts of appeals that have understood *Ross* to be applicable in circumstances remarkably similar to those presented here. For instance, in *United States* v. *Rivera*, 684 F.2d 308 (5th Cir. 1982), the court of appeals concluded that *Ross* required it to uphold a warrantless search of plastic wrapped bundles that proved to contain marijuana. Yet the search in that case—which, as in this case, took the form of extraction of core samples from the bales of marijuana—occurred more than 48 hours after the seizure of the bales. See *United States* v. *Rivera*, 654 F.2d 1048, 1050 (5th Cir. 1981). Similarly, in *Sharpe* v. *United States*, 712 F.2d 65 (4th Cir. 1983), cert. granted on other issues, No. 83-529 (June 18, 1984), the court of appeals recognized that *Ross* required it to "disavow" as "no longer valid" its prior ruling that a warrantless search of marijuana bales seized in the search of a pickup truck was unlawful. Yet, as the court's prior opinion indicates (see 660 F.2d 967, 969, 981-982 (1981)), the search in question had occurred at least two or three days after seizure. See also *United States* v. *Schecter*, 717 F.2d 864, 870-871 (3d Cir. 1983); cf. *United States* v. *Andreu*, 715 F.2d 1497, 1500-1501 & n.12 (11th Cir. 1983) (once officers had probable cause to search a vessel that was loaded on a trailer, a warrant was unnecessary even if there was time to secure one). These decisions—and respondents' failure to even advance the argument that delay in completing an automobile search renders *Ross* inapplicable (see page 7, *supra*)—"illuminate[] the profession's understanding of the scope of the search permitted under *Carroll*" and *Ross* (*Ross*, 456 U.S. at 819).

ration of the bales from the pickup trucks prior to the taking of the core samples, the search of the bales could no longer be considered an integral part of an automobile search, the *Carroll* doctrine accordingly should not apply, and the bales had to be regarded as containers subject to the warrant requirement of *Chadwick* and *Sanders*. But reliance on the location of the bales at the moment of the search misses the point of this Court's decisions.

Under *Ross*, the applicability of the *Carroll* doctrine to the search of a container does not depend on the location of the container at the time the container itself is opened for inspection, but turns instead upon the focus of the probable cause that authorized the automobile search and the warrantless seizure of the container. Thus, a primary reason for holding that the warrantless automobile search doctrine extends to inspection of suspicious containers found within an automobile was that the search of an automobile could not be regarded as complete or effective unless it extended to such containers. 456 U.S. at 818, 821 & n.28. The Court accordingly concluded that "the scope of a warrantless search of an automobile" is "defined by the object of the search and the places in which there is probable cause to believe that it may be found" (456 U.S. at 824). Under this standard, the removal of the bales of marijuana from the pickup trucks in which they were discovered, in the course of a lawful warrantless search, plainly does not vitiate the predicate for a warrantless search. The object of the search—to discover the contraband believed to have been placed in the trucks—remained the same, and the bales simply represented one of the places in which there was probable cause to believe that the contraband could be found.

Obviously, at some juncture in the course of an automobile search that discloses the presence of containers suspected of harboring the objects of the search, the containers ordinarily will be separated from the vehicle. As the Court observed in *Ross*, "[c]ontraband goods rarely are strewn across the trunk or floor of a car; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container" (456 U.S. at 820). In such cases it is rarely feasible to complete the search without removing the containers from the automobile. Indeed, this separation will often occur at or before the time the container is secured in police custody at the station house. Thus, insofar as the decision of the court of appeals depends on removal of the containers from the vehicle rather than on the passage of time, it would have the effect of rendering *Chambers* inapplicable to most searches of suspicious containers discovered in the course of a lawful warrantless automobile search. This result would largely overrule *Ross*, which teaches that such searches are not to be distinguished from the search of an automobile itself, and would largely nullify the practical consequences of *Chambers*. In *Ross* the Court pointedly refused to adopt such a constricting and self-defeating interpretation of the *Carroll* doctrine. See also *New York* v. *Belton*, 453 U.S. 454, 461-462 n.5 (1981).[17]

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[17] In *Belton* the Court rejected the "fallacious theory" that a seizure of property from an arrested suspect afforded police sufficient control over the encounter as to eliminate the justification for searching the property incident to arrest, noting that under this analysis "no search or seizure incident to a lawful custodial arrest would ever be valid" (453 U.S. at 462

The Court's discussion in *Ross* of *Chadwick* and *Sanders* confirms that the applicability of the auto search doctrine depends on the initial focus of probable cause, rather than on the location of the containers at the time of search. The reason the automobile search doctrine had no application in the latter cases is that "in neither *Chadwick* nor *Sanders* did the police have probable cause to search the vehicle or anything within it except the foot locker in the former case and the green suitcase in the latter" (456 U.S. at 814)—that is, in neither of the cases could the search be classified as an automobile search even at its inception. The Court also explained that the view that "the 'automobile exception' of *Carroll* applies whenever a container in an automobile was believed to contain contraband" has been "qualified by *Chadwick* and *Sanders*" (456 U.S. at 819 n.25). The temporary physical presence of a container within an automobile is thus an insufficient basis for excepting it from application of the warrant requirement.

By a parity of reasoning, the removal from a vehicle of a container, as an interim step in a search process that culminates in the examination of the contents of the container, *based on probable cause that extended to the vehicle as a whole*, is an insufficient basis for interposing a warrant requirement. Thus, contrary to the view of the court of appeals (see Pet. App. 12a), the fact that the Court in *Ross* distinguished rather than overruled *Chadwick* and

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n.5). To the extent that it rests upon the physical separation of the marijuana bales from the pickup trucks in which they were discovered, the decision below adopts a comparably fallacious approach to the search of containers found in an automobile search.

Sanders does not suggest that removal of a container from an automobile renders the auto search exception unavailable. Rather, it confirms the opposite conclusion, that the location of the container at the moment it is searched is not relevant to the proper inquiry in this case.

b. The impoundment of the bales of marijuana at the DEA warehouse is similarly irrelevant to the question whether the warrantless auto search doctrine is applicable to the ensuing completion of the search. As the Court stated in *Michigan* v. *Thomas*, 458 U.S. at 261, *Chambers* holds that when probable cause exists for a warrantless auto search, the search may be conducted without a warrant "even after [the vehicle] has been impounded and is in police custody"; the "justification to conduct such a warrantless search does not vanish once the car has been immobilized." To the extent the court below relied upon the impoundment of the marijuana bales in distinguishing *Ross* (see Pet. App. 13a) it made precisely the same error as the Florida court had made in *Meyers*, by reasoning that "the element of mobility had been removed because [the defendant's] vehicle had been impounded." See page 20, *supra*. Like that ruling, the ruling in this case "is clearly inconsistent with *Thomas* and *Chambers*" (*Meyers*, slip op. 3).

c. Nor does the passage of time between the seizure of the marijuana bales and the taking of core samples take this case outside the scope of the warrantless automobile search doctrine. As we have explained (pages 16-27, *supra*), this Court's automobile search decisions do not establish any requirement that a warrantless automobile search be completed immediately upon securing the vehicle at a

safe location, or even at the earliest practical opportunity. There is no reason why a different rule should apply to searches of containers that are authorized under *Carroll* and *Ross*. As we have explained, *Ross* establishes that the search of a container that is seized during a probable cause search directed at the contents of the vehicle as a whole is an integral part of an automobile search. "[U]ntil the container itself [is] opened the police could never be certain that the contraband was not secreted in a yet undiscovered portion of the vehicle" and the vehicle could not safely be released from further examination until the container was searched (456 U.S. at 821 n.28).

No Fourth Amendment policy consideration justifies limiting the automobile container search doctrine to cases in which inspection of suspicious containers discovered in an automobile has been completed with alacrity. Respondents acknowledge they "undoubtedly had a diminished expectation of privacy in their packages when the officers were entitled to search the packages, without a warrant, as part of an automobile search" (Br. in Opp. 30). Yet, neither they nor the court of appeals have offered any explanation as to how the passage of time between seizure of a container and its search could possibly serve to revive the individual's expectation of privacy in the container.[18] In fact, the residual expectation of pri-

[18] In point of fact, it is doubtful that respondents were even aware, until long after the search was complete, of any delay between the seizure of their bales and the completion of the search. And it is especially difficult to credit any claim that the delay gave rise to enhanced privacy expectations given that respondents never argued to the court of appeals—even after *Ross* had been decided—that the timing or location of the completion of the search made a warrant necessary.

vacy in these circumstances is negligible, at best. Because the officers needed no warrant—even under the court of appeals' view of the law—to open the bales they had seized either at the Bowie airstrip or "soon" after arrival of the bales at the DEA warehouse, any expectation that their unchanged contents would remain secret here would have been wholly unreasonable. See *Illinois* v. *Andreas*, No. 81-1843 (July 5, 1983), slip op. 5, 7-8; *United States* v. *Edwards*, 415 U.S. 800, 805-808 (1974).

The pointlessness of the Ninth Circuit's rule is especially evident on the facts of this case, because the distinctive odor emanating from the large cache of marijuana seized, as well as the characteristic appearance of the marijuana bales and the events preceding the seizure, obviated any need for an investigative search to ascertain the nature of the contents of the bales. Indeed, on the facts of this case a strong argument could be made that the containers announced their contents and accordingly "by their very nature [could not] support any reasonable expectation of privacy" sufficient to trigger a warrant requirement. *Arkansas* v. *Sanders*, 442 U.S. at 764-765 n.13; see *United States* v. *Jacobsen*, No. 82-1167 (Apr. 2, 1984), slip op. 10 n.17; *Texas* v. *Brown*, No. 81-419 (Apr. 19, 1983), slip op. 5-6 & n.5 (Stevens, J., concurring in the judgment).

But there is no need to reach that question here; at a minimum, the odor and appearance of the marijuana bales was sufficient to preclude any enhanced expectation of privacy from arising because of the lapse of time between the seizure and the actual penetration of the interior of the bales. Assuming that a significant delay in completing the search in fact occurred here (see page 5 note 2, *supra*), the

explanation appears to be at least in part that the officers were justifiably confident that they already knew precisely what they had found. In these circumstances, it is peculiar indeed to conclude that the mere passage of a few days' time made unreasonable the next investigative step preparatory to prosecution: the removal of core samples for laboratory analysis.[19]

At bottom, the court of appeals' reliance upon the timing of the core sampling operation is explained by its parting observation (Pet. App. 13a) that "[t]he officers could have easily obtained a warrant * * * during those three days." But in all likelihood this was equally true of the eight hours that elapsed in *Meyers*, and it was assuredly true of the seven day delay in *Cooper* v. *California*. But as Justice Black explained for the Court there (386 U.S. at 62, quoting *United States* v. *Rabinowitz*, 339 U.S. 56, 66 (1950)):

> It is no answer to say that the police could have obtained a search warrant, for "[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable."

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[19] We note that this investigative technique was rather unobtrusive in nature. In the exceedingly unlikely event that the officers were mistaken in their belief that the large bales contained marijuana, the officers probably would have learned only that the bales contained some bulk agricultural commodity of low privacy value. Moreover, even assuming that the bales contained straw designed to cushion fragile goods, the technique of core sampling employed here probably would not identify the nature of those goods. Cf. *United States* v. *Jacobsen*, slip op. 12-14; *United States* v. *Place*, No. 81-1617 (June 20, 1983), slip op. 10-11.

See also *United States* v. *Edwards*, 415 U.S. at 807. The court of appeals, however, did not identify any affirmative respect in which the warrantless search was less than reasonable. Instead, its ruling seems to rest in large measure upon an indistinctly articulated premise that the automobile search exception must be narrowly confined to circumstances in which its rationale is most compelling—*i.e.*, those in which a warrant requirement would wholly defeat a legitimate law enforcement objective.

While this approach is sustainable for many classes of cases, it is plainly incorrect where the automobile search doctrine is applicable. See *Ross*, 456 U.S. at 807 & n.9. Thus, the Court has frequently "sustained 'warrantless searches of vehicles . . . in cases in which the possibilities of the vehicles being removed or evidence in it destroyed'" while a warrant was sought "'were remote, if not nonexistent.'" *Chadwick*, 433 U.S. at 12, quoting *Cady* v. *Dombrowski*, 413 U.S. 433, 441-442 (1973). And even in cases where such risks do exist, the Court has recognized that the *Carroll* warrantless search doctrine cannot logically be justified by reference to the mobility of automobiles alone, for a warrantless seizure would frequently be sufficient to prevent interference with an ensuing search. *Ross*, 456 U.S. at 807 n.9. Nor is a "demonstrable 'exigency'" at the time of the search a necessary predicate for a warrantless automobile search (*Michigan* v. *Thomas*, 458 U.S. at 261 n.2). The lawfulness of such a search does not depend on a reviewing court's assessment of the likelihood that procuring a warrant would have interfered with legitimate law enforcement objectives in the particular case. *Id.* at 261; see pages 19-20, *supra*. In short, this Court has deliberately opted for

broad, easily administrable, general rules in marking out the contours of the automobile search doctrine.

d. For reasons already stated, this Court's decisions make clear that there is no occasion to reconsider the applicability of the rationale for the automobile search exception on a case-by-case basis, or to the circumstances of this case specifically. In any event, the court of appeals erred seriously in suggesting that the rationale for the automobile search exception does not apply to "packages secured for three days at a government warehouse" (Pet. App. 13a).

First, the court of appeals overlooked the Court's recognition that, strictly speaking, the mobility factor usually justifies only a warrantless seizure, and not a warrantless search of an automobile. As the Court made clear in *Chambers*, 399 U.S. at 52 (see also *Ross*, 456 U.S. at 807 n.9), to the extent the auto search doctrine rests upon the mobility factor, it depends upon the view that, in light of the magnitude of the intrusion effected by stopping an automobile (at which juncture it is infeasible to secure a warrant), any additional intrusion occasioned by a warrantless search after the vehicle is immobilized is insufficient to trigger a warrant requirement. Viewed from this perspective, it is erroneous to discount the "mobility" factor simply because the bales of marijuana were "secured for three days at a government warehouse" (Pet. App. 13a). As we have explained (pages 23-24, and 35-38, *supra*), the scope of the incremental intrusion occasioned by a warrantless search of a container does not vary depending upon the speed with which it is completed following seizure of the container, based upon probable cause, during an automobile search.

Second, the court of appeals wholly ignored the "diminished expectation of privacy which surrounds the automobile," which provides a principal and independent justification for the automobile search doctrine itself. See *United States* v. *Chadwick*, 433 U.S. at 12; see also *South Dakota* v. *Opperman*, 428 U.S. 364, 367-368 (1976). This privacy factor underlies the Court's decisions "sustain[ing] 'warrantless searches of vehicles . . . in cases in which the possibilities of the vehicle's being removed or evidence in it destroyed were remote, if not nonexistent.'" *Chadwick*, 433 U.S. at 12, quoting *Cady* v. *Dombrowski*, 413 U.S. at 441-442. *Ross* teaches that this diminished expectation of privacy extends both to "a vehicle and its contents * * * if probable cause is given to believe that the vehicle is transporting contraband" (456 U.S. at 823), and reaffirms that limiting warrantless searches to on-the-spot examinations undertaken immediately would provide no significant protection for privacy interests (*id.* at 807 n.9). And as we have explained, neither any delay in completing the inspection of containers, nor the physical separation of containers from the vehicle in which they were found (circumstances that the owner of seized property is likely to be ignorant of until long after the search has been completed) serves in any way to augment the privacy expectations of the property owner. Thus the diminished privacy expectation analysis is also fully applicable here.

2. The court of appeals' conclusion that the delay between the seizure of the marijuana bales and the completion of the search made it necessary to secure a warrant rests to a large extent upon a line of Ninth Circuit cases concerning searches of property

within the immediate control of an arrestee, sought to be justified as incident to the arrest, but which were not completed until after the arrest encounter was concluded. In *United States* v. *Monclavo-Cruz*, 662 F.2d 1285 (1981), the court of appeals had held impermissible the search of an arrestee's purse conducted an hour after the arrest, at a station house location removed from that of the arrest.[20] In *United States* v. *Burnette*, 698 F.2d 1038 (1983), however, the court of appeals had upheld a station house search of an arrestee's purse, distinguishing *Monclavo-Cruz* on the ground that a cursory initial search of the purse carried out at the time of the arrest so diminished the arrestee's expectation of privacy therein as to justify the subsequent warrantless search. The court below concluded that *Burnette* and *Monclavo-Cruz*, taken together, required rejection of any argument that a "delayed" warrantless search should be upheld as reasonable simply because it lawfully could have been carried out at an earlier juncture without a warrant (Pet. App. 10a-11a, 13a).

The court of appeals' reliance upon decisions governing the search incident to arrest doctrine was misplaced. Of course, it is well established that "[o]nce law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest." *Chadwick*, 433 U.S. at 15. Because the objectives of

[20] This result would not appear to survive *Illinois* v. *Lafayette, supra.*

protecting law enforcement officers and preserving evidence are typically the basis for allowing searches incident to an arrest, see *Chadwick*, 433 U.S. at 14, when all potential for threatening action by an arrestee is removed, the justification for a search incident to arrest ordinarily is no longer viable, even though there may have been valid reasons for deferring the search.

Thus, in both *Chambers* v. *Maroney* and *Cardwell* v. *Lewis*, the Court noted that a search incident to arrest rationale would not support the delayed automobile searches undertaken (see pages 16-18, *supra*). But in the very same cases, of course, the Court upheld the application of the automobile search doctrine, notwithstanding the delay. Thus, *Chambers* and *Cardwell* indicate that warrantless automobile searches are free of the contemporaneity requirement ordinarily applicable to searches incident to arrest.[21] The court of appeals' attempt to extract a governing principle for this case from decisions respecting searches incident to arrest accordingly is unsound. Unlike searches incident to arrest, which do not depend on probable cause and which are ordinarily predicated upon circumstances prevailing at the time of an arrest, the justifications for a warrantless automobile search—probable cause coupled with the prior intrusion effected by the antecedent seizure and the diminished expectation of privacy that inheres in automobiles, are not eroded by the passage of time.

[21] The contemporaneity requirement is not uniformly applicable to searches incident to arrest. As the Court recognized in *United States* v. *Edwards, supra,* the justification for a search incident to arrest is not eliminated upon completion of the arrest when the search is directed to property that continues following arrest to be associated directly with the person of the arrestee.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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